

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARTINE'S SERVICE CENTER, INC. and
MICHAEL C. MARTINE,

Plaintiffs,

-against-

THE TOWN OF WALLKILL, JOHN WARD,
individually and as Supervisor of the Town of
Wallkill, ROBERT HERTMAN, individually and as
Chief of Police of the Town of Wallkill, EUGENE
JAQUES, individually and as Building Inspector of
the Town of Wallkill; DON KIMBLE, individually
and as Deputy Building Inspector of the Town of
Wallkill, WALFETER J. BARRETT, individually and
as Assistant Building Inspector of the Town of
Wallkill, and JOHN DOES I, II, and III, Individually
and as officers of the Town of Wallkill,

Defendants.
-----X

ANSWER

Docket No.
07 Civ. 6327 (SCR)

Defendants, by their attorneys, MIRANDA SOKOLOFF SAMBURSKY SLONE
VERVENIOTIS, LLP, as and for their answer to the complaint in the above-captioned
action, set forth as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations contained in ¶ "1" of the complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth of
the allegations contained in ¶ "2" of the complaint.
3. Admit the allegations contained in ¶ "3" of the complaint.
4. Admit the allegations contained in ¶ "4" of the complaint.

5. Deny the allegations contained in ¶ “5” of the complaint, and refer all questions of law to the Court for adjudication.

6. Admit the allegations contained in ¶ “6” of the complaint.

7. Admit the allegations contained in ¶ “7” of the complaint.

8. Admit the allegations contained in ¶ “8” of the complaint.

9. Admit the allegations contained in ¶ “9” of the complaint.

10. Deny the allegations contained in ¶ “10” of the complaint.

11. Deny the allegations contained in ¶ “11” of the complaint.

12. Admit the allegations contained in ¶ “12” of the complaint.

13. Admit the allegations contained in ¶ “13” of the complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “14” of the complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “15” of the complaint.

16. Deny the allegations contained in ¶ “16” of the complaint, and refer all questions of law to the Court for adjudication.

17. Deny the allegations contained in ¶ “17” of the complaint, and refer all questions of law to the Court for adjudication.

18. Deny the allegations contained in ¶ “18” of the complaint.

19. Deny the allegations contained in ¶ “19” of the complaint.

20. Deny the allegations contained in ¶ “20” of the complaint.

21. Deny the allegations contained in ¶ “21” of the complaint, and refer all questions of law to the Court for adjudication.

22. Deny the allegations contained in ¶ “22” of the complaint, and refer all questions of law to the Court for adjudication.

23. Deny the allegations contained in ¶ “23” of the complaint, and refer all questions of law to the Court for adjudication.

24. Deny the allegations contained in ¶ “24” of the complaint, and refer all questions of law to the Court for adjudication.

25. Deny the allegations contained in ¶ “25” of the complaint, and refer all questions of law to the Court for adjudication.

26. Deny the allegations contained in ¶ “26” of the complaint, and refer all questions of law to the Court for adjudication.

27. Deny the allegations contained in ¶ “27” of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “28” of the complaint.

29. Deny the allegations contained in ¶ “29” of the complaint.

30. Deny the allegations contained in ¶ “30” of the complaint.

31. Deny the allegations contained in ¶ “31” of the complaint.

32. Deny the allegations contained in ¶ “32” of the complaint.

33. Admit the allegations contained in ¶ “33” of the complaint.

34. Deny the allegations contained in ¶ “34” of the complaint, and refer the Court to the pleadings in that proceeding for their full and complete contents and import.

35. Admit the allegations contained in ¶ “35” of the complaint.

36. Deny the allegations contained in ¶ “36” of the complaint, and refer the Court to the judgment in that proceeding for its full and complete contents and import.

37. Deny the allegations contained in ¶ “37” of the complaint, and refer the Court to the judgment in that proceeding for its full and complete contents and import.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “38” of the complaint.

39. Admit the allegations contained in ¶ “39” of the complaint.

40. Admit the allegations contained in ¶ “40” of the complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “41” of the complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “42” of the complaint.

43. Deny the allegations contained in ¶ “43” of the complaint, and refer all questions of law to the Court for adjudication.

44. Deny the allegations contained in ¶ “44” of the complaint.

45. Deny the allegations contained in ¶ “45” of the complaint, and refer all questions of law to the Court for adjudication.

46. Deny the allegations contained in ¶ “46” of the complaint, and refer all questions of law to the Court for adjudication.

47. Deny the allegations contained in ¶ “47” of the complaint, and respectfully refer the Court to the pleadings in that action for their full and complete contents and import.

48. Deny the allegations contained in ¶ “48” of the complaint, and respectfully refer the Court to the pleadings in that action for their full and complete contents and import.

49. Admit the allegations contained in ¶ “49” of the complaint.

50. Deny the allegations contained in ¶ “50” of the complaint, and respectfully refer the Court to the Judge Briant’s decision for its full and complete contents and import.

51. Deny the allegations contained in ¶ “51” of the complaint.

FIRST CAUSE OF ACTION

52. As and for a response to the allegations contained in ¶ “52” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “1” through “51” of the complaint, as though they were fully set forth herein.

53. Admit the allegations contained in ¶ “53” of the complaint.

54. Deny the allegations contained in ¶ “54” of the complaint.

55. Admit the allegations contained in ¶ “55” of the complaint.

56. Deny the allegations contained in ¶ “56” of the complaint.

57. Deny the allegations contained in ¶ “57” of the complaint.

58. Deny the allegations contained in ¶ “58” of the complaint, and refer all questions of law to the Court for adjudication.

59. Deny the allegations contained in ¶ “59” of the complaint, and refer all questions of law to the Court for adjudication.

60. Deny the allegations contained in ¶ “60” of the complaint.

61. Deny the allegations contained in ¶ “61” of the complaint.

62. Deny the allegations contained in ¶ “62” of the complaint.

63. Deny the allegations contained in ¶ “63” of the complaint, and refer all questions of law to the Court for adjudication.

64. Deny the allegations contained in ¶ “64” of the complaint, and refer all questions of law to the Court for adjudication.

65. Deny the allegations contained in ¶ “65” of the complaint, and refer all questions of law to the Court for adjudication.

66. Deny the allegations contained in ¶ “66” of the complaint.

67. Deny the allegations contained in ¶ “67” of the complaint.

68. Deny the allegations contained in ¶ “68” of the complaint.

69. Deny the allegations contained in ¶ “69” of the complaint.

70. Deny the allegations contained in ¶ “70” of the complaint.

71. Deny the allegations contained in ¶ “71” of the complaint.

72. Deny the allegations contained in ¶ “72” of the complaint, and refer all questions of law to the Court for adjudication.

73. Deny the allegations contained in ¶ “73” of the complaint, and refer all questions of law to the Court for adjudication.

74. Deny the allegations contained in ¶ “74” of the complaint, and refer all questions of law to the Court for adjudication.

75. Deny the allegations contained in ¶ “75” of the complaint, and refer all questions of law to the Court for adjudication.

76. Deny the allegations contained in ¶ “76” of the complaint, and refer all questions of law to the Court for adjudication.

77. Deny the allegations contained in ¶ “77” of the complaint, and refer all questions of law to the Court for adjudication.

78. Deny the allegations contained in ¶ “78” of the complaint, and refer all questions of law to the Court for adjudication.

79. Deny the allegations contained in ¶ “79” of the complaint.

80. Admit the allegations contained in ¶ “80” of the complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ “81” of the complaint.

82. Deny the allegations contained in ¶ “82” of the complaint, and refer all questions of law to the Court for adjudication.

83. Deny the allegations contained in ¶ “83” of the complaint, and refer all questions of law to the Court for adjudication.

84. Deny the allegations contained in ¶ “84” of the complaint.

85. Deny the allegations contained in ¶ “85” of the complaint, and refer all questions of law to the Court for adjudication.

86. Deny the allegations contained in ¶ “86” of the complaint, and refer all questions of law to the Court for adjudication.

87. Deny the allegations contained in ¶ “87” of the complaint, and refer all questions of law to the Court for adjudication.

88. Deny the allegations contained in ¶ “88” of the complaint, and refer all questions of law to the Court for adjudication.

89. Deny the allegations contained in ¶ “89” of the complaint.

90. Deny the allegations contained in ¶ “90” of the complaint.

91. Deny the allegations contained in ¶ “91” of the complaint, and refer all questions of law to the Court for adjudication.

92. Deny the allegations contained in ¶ “92” of the complaint.

93. Deny the allegations contained in ¶ “93” of the complaint.

94. Deny the allegations contained in ¶ “94” of the complaint.

95. Deny the allegations contained in ¶ “95” of the complaint.
96. Deny the allegations contained in ¶ “96” of the complaint, and respectfully refer the Court to the letter for its full and complete contents and import.
97. Deny the allegations contained in ¶ “97” of the complaint, and refer all questions of law to the Court for adjudication.
98. Deny the allegations contained in ¶ “98” of the complaint, and refer all questions of law to the Court for adjudication.
99. Deny the allegations contained in ¶ “99” of the complaint, and refer all questions of law to the Court for adjudication.
100. Deny the allegations contained in ¶ “100” of the complaint, and refer all questions of law to the Court for adjudication.
101. Deny the allegations contained in ¶ “101” of the complaint, and refer all questions of law to the Court for adjudication.
102. Deny the allegations contained in ¶ “102” of the complaint, and refer all questions of law to the Court for adjudication.
103. Deny the allegations contained in ¶ “103” of the complaint, and refer all questions of law to the Court for adjudication.

SECOND CAUSE OF ACTION

104. As and for a response to the allegations contained in ¶ “104” of the complaint, defendants repeat and reallege their responses to the allegations contained in ¶¶ “1” through “103” of the complaint, as though they were fully set forth herein.
105. Deny the allegations contained in ¶ “105” of the complaint, and refer all questions of law to the Court for adjudication.

106. Deny the allegations contained in ¶ “106” of the complaint, and refer all questions of law to the Court for adjudication.

DAMAGES

107. Deny the allegations contained in ¶ “107” of the complaint, and refer all questions of law to the Court for adjudication.

108. Deny the allegations contained in ¶ “108” of the complaint, and refer all questions of law to the Court for adjudication.

109. Deny the allegations contained in ¶ “109” of the complaint.

FIRST AFFIRMATIVE DEFENSE

110. Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

111. The individual defendants are protected by qualified immunity.

THIRD AFFIRMATIVE DEFENSE

112. Plaintiffs were not deprived of a property right without due process of law.

FOURTH AFFIRMATIVE DEFENSE

113. Plaintiffs have failed to effectuate proper service on some or all of the defendants.

FIFTH AFFIRMATIVE DEFENSE

114. Plaintiffs lack personal jurisdiction over some or all of the defendants.

SIXTH AFFIRMATIVE DEFENSE

115. Plaintiffs' claims are barred, in whole or in part, by the statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

116. Plaintiffs have failed to file a notice of claim under § 50-h of the New York General Municipal Law.

EIGHTH AFFIRMATIVE DEFENSE

117. Plaintiffs' claims are barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

118. Plaintiffs' claims are barred by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

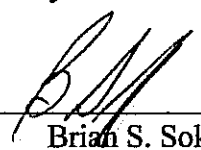
119. Plaintiffs' constitutional rights were not deprived pursuant to a policy, practice, custom, or procedure of the Town of Wallkill.

ELEVENTH AFFIRMATIVE DFENSE

120. Plaintiffs may not recover punitive damages against a municipality.

Dated : Mineola, New York
September 17, 2007

MIRANDA SOKOLOFF SAMBURSKY
SLONE VERVENIOTIS LLP
Attorneys for Defendants

By: 
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Our File No.: 07-500

TO: STEPHEN L. OPPENHEIM, ESQ.
Attorney for Plaintiffs
55 East 9th Street, New York, New York 10003

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) s.s.:
COUNTY OF NASSAU)

MERLISA ANDREWS, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Jamaica, New York.

That on September 17, 2007, deponent served the within **ANSWER** upon:

STEPHEN L. OPPENHEIN, ESQ.
55 East 9th Street
New York, NY 10003

the addresses designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


MERLISA ANDREWS

Sworn to before me this 17th day
Of September, 2007.



NOTARY PUBLIC

BRIAN S. SOKOLOFF
Notary Public, State of New York
No. 02SO4914710
Qualified in Queens County
Commission Expires November 23, 2009